

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF AWILDA SANTIAGO, ESSEX)
PROBATE COURT DOCKET #03P-2499AD1 and)
AND AS SHE IS THE ADMINISTRATRIX OF)
THE ESTATE OF JOSE SANTIAGO, BERLIN)
(CONNECTICUT) PROBATE COURT,)
CASE #03-0713 AND NANCY ROSARIO AND)
MICHAEL MILLER, AS GUARDIANS OF)
CHRISTINA SANTIAGO AND VERONICA)
ROSARIO, ESSEX PROBATE COURT DOCKET)

Civil Action #05-CV-10617MLW

Plaintiffs

v.

RARE HOSPITALITY INTERNATIONAL, INC.)
d/b/a LONGHORN STEAKHOUSE)

Defendant

AFFIDAVIT OF ALBERT L. FARRAH, JR.

1. My name is Albert L. Farrah, Jr. At all times pertinent hereto, I have acted as counsel to the plaintiffs in the above matter.

2. Attached hereto as exhibits are copies of the following documents:

Exhibit A: Prior testimony portion of the Rule 26 report of William Burke, Ph.D.

Exhibit B: Prior testimony portion of the Rule 26 report of Thomas Gualtieri, M.D.

Exhibit C: Prior testimony portion of the Rule 26 report of Robert Pandina.

Exhibit D: Five (5) e-mails between my office and defendant's counsel, Michael Gillis, concerning this matter. The e-mails are dated: March 2, 2007; March 12, 2007; March 27, 2007 and April 17, 2007.

Exhibit E: E-mail and letter to me dated April 18, 2007 from Michael Gillis.

Exhibit F: Listings of prior testimony, which is a portion of the Rule 26 report of David Benjamin, Ph.D., a liability expert for plaintiffs, referred to in Mr. Gillis' April 18, 2007 letter to me.

3. I estimate that between my efforts to resolve this matter informally, my efforts in preparing this motion to compel, and, if required, arguing this motion, I will have spent a total of five (5) hours. I have practiced law in Massachusetts since 1974, specializing in civil trial practice. I have tried numerous jury trials, have represented clients in matters before the Massachusetts Supreme Judicial Court and Appeals Court, and the United States Court of Appeals for the First Circuit. For many years I have enjoyed an AV Martindale-Hubbell rating, and am listed in the 2006 Martindale-Hubbell Bar Register of Preeminent Lawyers in the area of civil trial practice. The fair and reasonable value of my services is \$300 per hour.

4. I estimate that my law clerk, Michael Lane, has spent eight hours in preparing this motion to compel. The fair and reasonable value of his services is \$90 per hour.

Signed under the pains and penalties of perjury this 1st day of May, 2007.

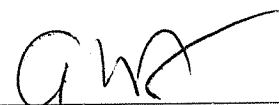

ALBERT L. FARRAH, JR., ESQ.

CERTIFICATE OF SERVICE

SUFFOLK, SS

May 1, 2007

A copy the Affidavit of Albert L. Farrah, Jr. was today emailed and mailed, postage prepaid to Michael Gillis, Esq., Gillis & Bikofsky, P.C. 1150 Walnut Street, Newton Highlands, MA 02461.


Albert L. Farrah, Jr., Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY,
AS SHE IS THE ADMINISTRATRIX OF
THE ESTATE OF AWILDA SANTIAGO,
ESSEX PROBATE COURT DOCKET
#03P-2499ADI, P/P/A VERONICA
ROSARIO AND CHRISTINA SANTIAGO,
AND AS SHE IS THE ADMINISTRATRIX
OF THE ESTATE OF JOSE SANTIAGO,
BERLIN (CONNECTICUT) PROBATE
COURT, CASE #03-0713

Plaintiff

v.

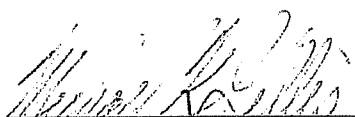
RARE HOSPITALITY INTERNATIONAL,
INC. d/b/a LONGHORN STEAKHOUSE

Defendant

Civil Action Number:
05-CV-10617MLW

RULE 26 REPORT OF WILLIAM BURKE, PH. D.

The Defendant,
By Its Attorneys,



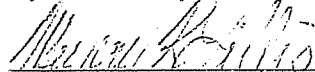
Michael K. Gillis, Esq.
BBO# 543551
Neil D. Schnurbach, Esq.
BBO# 664534
GILLIS & BIKOFSKY, P.C.
1150 Walnut Street
Newton, MA 02461
Tel. 617-244-4300

CERTIFICATE OF SERVICE

I, Michael K. Gillis, of Gillis & Bikofsky, P.C., attorneys for Rare Hospitality International, Inc., hereby certify that on February 12th, 2007, a true copy of the above document was served upon all counsel of record by in hand service.

RARE HOSPITALITY INTERNATIONAL, INC.
d/b/a LONGHORN STEAKHOUSE

By its Attorneys, 7

A handwritten signature in dark ink, appearing to read "Michael K. Gillis", is written over a horizontal line.

Michael K. Gillis, Esq.
GILLIS & BIKOFSKY, P.C.
1150 Walnut Street
Newton, MA 02461
(617) 244-4300
BBO# 543551

TRIAL TESTIMONY

<u>CASE</u>	<u>ATTORNEY</u>	<u>DATE</u>	<u>CITY/STATE</u>
G. Taks	Lauren Handler	1/8/03	Morristown, NJ
J. Clark	Brian Rekofke	1/29/03	Spokane, WA
M. Podsedly	Michael Appel	2/10/03	Boston, MA
W. Hopper	Francis Young	2/21/03	White Plains, NY
M. Stymest	Deborah Santello	3/4/03	Lowell, MA
G. Fields	Kathy Dougherty	3/26/03	Columbus, OH
J. Hourihan	Arthur Siegel	6/19/03	Cooperstown, NY
M. Francis	Mark Morrisette	11/18/03	Concord, NH
L. Rutherford	Kathy Dougherty	5/6/04	Columbus, OH
I. Swenson	Joseph Wadland	5/10/04	Boston, MA
C. Thorndike	Stephen Wade	5/12/04	Bangor, ME
B. Hall	Steven Latici	5/20/04	N. Haverhill, NH
D. Brooks	Ernest Alvino	6/1/04	Woodbury, NJ
D. Lomon	Daniel Deutsch	9/20/04	Cambridge, MA
P. McCrone	Kevin Leach	11/12/04	Dover, NH
M. Marvel	Les Palmer	2/23/05	Fort Worth, TX
H. Choi	Paul Leavis	3/7/05	Boston, MA
J. Kroft	Michael Mackey	3/11/05	Albany, NY
M. Burr	Kenneth Blumenthal	4/6/05	Columbus, OH
T. Peters-Thill	Kenneth Blumenthal	5/17/05	Columbus, OH
M. Sturman	John E. Hart	7/13/05	Portland, OR
S. Crisp	Arden Curry	9/22/05	Charleston, WV
B. Falconer	Carolyn Latti	11/9/05	Bangor, ME
N. Pelletier	Joseph Burns	12/1/05	Waterbury, CT
H. Bergeron	Richard Fradette	12/12/05	Concord, NH
N. Tejada	James Lynch	1/27/06	Newark, NJ
O. Quinn	Gregory Mills	3/3/06	Albany, NY
P. Abrams	John Vincent	3/16/06	Mt. Vernon, OH
K. Nielson	Cory Meyer	4/6/06	Chicago, IL
D. Krock	Jeffrey Hensley	8/17/06	Palm Harbor, FL
V. Grenier	Thomas Craig	8/23/06	Manchester, NH
S. Shaw	Joseph McKittrick	9/12/06	Portsmouth, NH
T. Hawkins	Joseph King	9/27/06	Atlanta, GA
L. MacDonald	Erik Simenson	10/27/06	Brentwood, NH
O. Kipman	Pinchas Zeltzer	11/15/06	Haifa, Israel
J. Mendez	Jonathan Rice	12/1/06	Bronx, NY
D. Pool	James Lynch	1/8/07	Morristown, NJ

DEPOSITIONS

CASE	ATTORNEY	DATE	CITY/STATE
D. Whaley	Christopher Kelly	1/10/03	Greenville, SC
T. Blake	Rex Smith	1/13/03	Atlanta, GA
N. LePage	Mary Kehoe	1/27/03	Burlington, VT
T. Higgins	Buddy Paul	1/28/03	Spokane, WA
J. Kelley	David Robinson	2/7/03	Fort Worth, TX
A. De Luna Magana	Steven Springer	2/11/02	Dallas, TX
G. Fields	Kathy Dougherty	2/27/03	Columbus, OH
H. Oldham	Michael Koffman	3/13/03	Boston, MA
R. McGuire	Kelly Puls	3/17/03	Ft. Worth, TX
D. Markle	Kathy Dougherty	4/2/03	Columbus, OH
C. McCray	Mark Prost	4/8/03	St. Louis, Missouri
E. Bush	Judson Graves	4/18/03	Atlanta, GA
G. Thacker	Thomas Carlock	4/21/03	Atlanta, GA
C. Peake	Kevin Dugan	6/2/03	Manchester, NH
C. Huh	Kathy Dougherty	7/7/03	Columbus, OH
D. Markle	Kathy Dougherty	7/8/03	Columbus, OH
W. Lupoli	James Boumil	7/11/03	Lowell, MA
J. Kidd	Mark Boyd	7/15/03	Ft. Lauderdale, FL
M. Simpson	Kevin Leach	7/21/03	Manchester, NH
H. Olivarez	Steve Gonzalez	8/28/03	McAllen, TX
H. Choi	Deborah Santello	9/3/03	Boston, MA
L. Scaggs	Jeff Beausay	9/4/03	Columbus, OH
J. Nicklis	Kathy Dougherty	9/15/03	Columbus, OH
K. Nielsen	Corey Meyer	9/17/03	Chicago, IL
R. Schiffers	Jerry Kirksey	9/24/03	Edmond, OK
T. Lewis	Chester Tennyson	9/25/03	Lincoln, ME
J. Dobson	Jeff Beausay	9/26/03	Columbus, OH
L. Rutherford	Kathy Dougherty	10/8/03	Columbus, OH
R. Hester	Douglas Suter	10/28/03	Columbus, OH
K. Sallette	John Richards	11/3/03	Ft. Lauderdale, FL
B. Hall	Steven Latici	11/10/03	Gilford, NH
S. Zatkulak	Marie Reilly	11/11/03	Philadelphia, PA
T. Thompson	Timothy Van Eman	11/17/03	Columbus, OH
P. Forrest	John Snyder	12/203	Philadelphia, PA
T. Zimmer	Daniel Glassman	12/10/03	Gainesville, FL
D. Burt	Randy Moore	12/15/03	Fort Worth, TX
B. Greenia	Steven Bredice	1/12/04	Essex Junction, VT
D. Watson	Paul Boyd	2/19/04	W. Palm Beach, FL
I. Swenson	Joseph Wadland	3/8/04	Boston, MA
H. Mendoza	Roy Spezia	3/12/04	Austin, TX
L. Saria	Michael Bee	3/15/04	Charleston, WV
K. Wallace	Dan McDonald	4/15/04	Fort Worth, TX
M. Salinas	William Garza	4/29/04	McAllen, TX
V. Spencer	David Heinlein	5/18/04	Boston, MA
C. Baker	Kelly Puls	6/16/04	Fort Worth, TX
L. Campbell	Gerald Cook	6/21/04	Boston, MA
Y. Vasquez	Luis Martinez	7/12/04	Miami, FL
K. Walker	Victoria Davis	7/23/04	Atlanta, GA
P. McGhee	Michael Bee	8/16/04	Charleston, WV
L. Culleton	Michael Bee	8/16/04	Charleston, WV
C. Verner	John Hart	8/23/04	Fort Worth, TX

M. Marvel	Les Palmer	8/27/04	Waco, TX
M. Elswick	Arden Curry	9/13/04	Charleston, WV
D. Fried	James King	10/5/04	Spokane, WA
P. McCrone	Kevin Leach	10/7/04	Manchester, NH
U. Labossiere	Hubert McGinley	10/12/04	W. Palm Beach, FL
L. Devoe	James King	10/13/04	Spokane, WA
R. Davilla-Torres	Henry Vazquez	11/13/04	San Juan, PR
D. Zegunis	Jeffry Spears	12/10/04	Rockford, IL
E. Marzan	Henry Vazquez	1/22/05	South Beach, FL
C. Reeves	Mark Hall	2/1/05	Burlington, VT
B. Wood-Lewis	William Leckerling	2/4/05	Burlington, VT
L. Doherty	Kenneth Brown	2/28/05	Manchester, NH
J. Spencer	Stephen Wade	3/25/05	Auburn, ME
B. Manning	Alan Cantor	4/14/05	Boston, MA
C. Segretario	Stephen Wade	4/15/05	Auburn, ME
R. Berwanger	Elgine McArdle	4/19/05	Morgantown, WV
E. Meyer	Eric Gibbs	4/27/05	Orlando, FL
T. Harris	Brian Kilbane	5/5/05	Grand Rapids, MI
J. Davis	Michael Rourke	5/16/05	Columbus, OH
S. Bohlin	Steven Lewis	6/1/05	Washington, DC
M. Landman	John Richards	6/2/05	Ft. Lauderdale, FL
D. Mayberry	Robert Dellecker	6/9/05	W. Palm Beach, FL
S. Pouliot	Karen Wolf	6/14/05	New Haven, CT
K. Dukes	Bruce Ferriel	9/6/05	Elizabethtown, KY
R. Young	John Hart	10/3/05	Fort Worth, TX
N. Tejada	James Lynch	10/14/05	Paramus, NJ
L. Desclos	Kevin Leach	10/17/05	Manchester, NH
C. Laag	Paul Bradley	10/18/05	Wilmington, DE
F. Omar	Dimaris Martinez	10/19/05	San Juan, PR
N. Pelletier	Joseph Burns	11/4/05	Hartford, CT
D. Mayberry	Robert Dellecker	11/17/05	W. Palm Beach, FL
V. Saladino	Kevin McAndrew	12/21/05	Woodbury, NY
C. Maitre	Aaron Levine	1/5/06	Washington, DC
M. Neville	Thomas Craig	1/12/06	Manchester, NH
L. Lapensee	Francis Morrison	1/18/06	Boston, MA
R. Bonhomme	Mark Boyd	2/7/06	West Palm Beach, FL
T. Tomson	Kenneth Blumenthal	2/17/06	Columbus, OH
S. Groppenbacher	Mark Shoemaker	2/23/06	Woodbury, NJ
H. Ellis	Jon Uman	2/23/06	Gainesville, FL
J. Miller	Michael Rourke	2/24/06	Columbus, OH
D. Cosmillo	Nancy LaVista	2/28/06	West Palm Beach, FL
M. Harlow	Amy Larson	3/14/06	Troy, Michigan
G. Arbelo	Andrew Bray	3/23/06	Fort Lauderdale, FL
M. Neville	Thomas Craig	3/29/06	Manchester, NH
J. Benoit	Laura Johnston	4/11/06	Reston, VA
F. Howard	Robert Miller	4/26/06	Columbus, OH
R. Rice	William Cade	5/4/06	Albany, NY
B. Shaw	Sumner Lipman	5/15/06	Bangor, ME
B. & S. Manos	Patrick Koenen	5/16/06	Appleton, WI
J. Dow	Thomas Fay	6/22/06	Boston, MA
A. Johnson	David Gottesman	7/18/06	Nashua, NH
T. Hawkins	Joseph King	7/26/06	Atlanta, GA
J. McKinley	Greg Brunton	8/22/06	Columbus, OH
P. Mace	Sumner Lipman	8/25/06	Augusta, ME
C. Shippy	Michael Bee	8/31/06	Charleston, W.VA
J. Tayler	Bernard Van Ogtrop	9/11/06	Wilmington, DE
O. Johnigan	Alan Brown	9/21/06	Tyler, TX


P. Riggs	Robert Bonsignore	11/21/06	Boston, MA
J. Pinkham	Sumner Lipman	11/27/06	Augusta, ME
A. Rubenacker	Robert Larsen	11/28/06	Chicago, IL
M. Bazzell	Bill T. Walker	12/8/06	Granite City, IL
J. Stanley	Robert Campbell	12/21/06	Charleston, WV

UNITED STATES DISTRICT COURT
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NANCY ROSARIO, INDIVIDUALLY,)	
AS SHE IS THE ADMINISTRATRIX OF)	
THE ESTATE OF AWILDA SANTIAGO,)	
ESSEX PROBATE COURT DOCKET)	
#03P-2499ADI, P/P/A VERONICA)	
ROSARIO AND CHRISTINA SANTIAGO,)	
AND AS SHE IS THE ADMINISTRATRIX)	
OF THE ESTATE OF JOSE SANTIAGO,)	
BERLIN (CONNECTICUT) PROBATE)	
COURT, CASE #03-0713)	Civil Action Number:
)	05-CV-10617MLW
Plaintiff)	
)	
v.)	
)	
RARE HOSPITALITY INTERNATIONAL,)	
INC. d/b/a LONGHORN STEAKHOUSE)	
)	
Defendant)	

RULE 26 REPORT OF THOMAS GUALTIERI, M.D.

The Defendant,
By Its Attorneys,

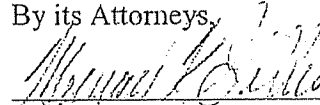

Michael K. Gillis, Esq.
BBO# 543551
Neil D. Schnurbach, Esq.
BBO# 664534
GILLIS & BIKOFSKY, P.C.
1150 Walnut Street
Newton, MA 02461
Tel. 617-244-4300

CERTIFICATE OF SERVICE

I, Michael K. Gillis, of Gillis & Bikofsky, P.C., attorneys for Rare Hospitality International, Inc., hereby certify that on February 14th, 2007, a true copy of the above document was served upon all counsel of record by in hand service.

RARE HOSPITALITY INTERNATIONAL, INC.
d/b/a LONGHORN STEAKHOUSE

By its Attorneys,



Michael K. Gillis, Esq.

GILLIS & BIKOFSKY, P.C.

1150 Walnut Street

Newton, MA 02461

(617) 244-4300

BBO# 543551

C. Thomas Gualtieri, MD
TESTIMONY & DEPOSITIONS

Depositions

Robin Taylor-Hall v.
David Pishko, atty P
Durham, NC

Randau v. Food Lion
Richard Watson, atty P
Durham, NC

Lawson v. MTL, et al.
Honolulu, Hawaii D

Larry Horowitz
Tom McNeely, atty P
Charlotte, NC

Green v. Enterprise
Tom Mcneely, atty P
West Palm Beach, Fla

Fei v. Averitt Express
Rex Smith, atty D
Atlanta, GA

Cody Clark v. Kolcraft Enterprises, Inc.
Robert Rohrbaugh, atty. P
Florida

Hoopes v. U.S.A.
U.S. Attorney General's Office D
Raleigh, NC

Tim Asel
Geoffrey Fieger, atty P
Southfield, MI

Cash v. U.S.A.
U.S. Attorney General's Office D
Raleigh, NC

Crayton v. Delta Airlines
Rex Smith, atty D
Atlanta, GA

Anthony Kepler
Geoffrey Fieger, atty P
Detroit, Michigan

Ngoc Nguyen v. FMC Corp
Daniel DeCiccio, atty P

Orlando, Florida

Clay Harrell v Harmon
Joe Ivey, atty P
Edgecomb Co., NC

Howard v.
Dean Amburn, atty P
Detroit, Michigan

Phillip Trieb v.
Dean Amburn, atty P
Detroit, Michigan

Norma Oxendine v.
Mitch Baker, atty P
Fayetteville, NC

Dolphus Brantley
Robert Lucas, atty P
Selma, NC

Larry Cook v. Security Storage Co of Raleigh
Reid Acree, atty P
Raleigh, NC

Robert Williams v. Puryear Trucking Co.
Philip Hornthal, atty D
Elizabeth City, NC

Marvin Holbrook
Robert Gage, atty P
Raleigh, NC

Pam Nunnery v. Eric Baucom et al
Cameron Caudle, atty D
Mecklenburg Co., NC

Reece v. Hlusko
John Jessee, atty D
Roanoke, VA

Laverne Kern v. University of Michigan Medical Center
Rebecca Eaton, atty P
Detroit, Michigan

Vivian Knight
Michael Sigmon, atty P
Cary, NC

Denise Coffin
Richard Watson, atty P
Durham, NC
DB Batchelor v. Bethany Miller
Victor Morgan, atty P
Duplin Co., NC

Jennifer Lanier v Charlotte-Mecklenburg Hospital
Tom McNeely, atty P
Mecklenburg Co., NC

Richard Johnson v. Hunter, et al.
David Duke, atty P
Memphis, TN

Henry Grange v.
Geoffrey Fieger, atty, P
Detroit, Michigan

Bernice Ray v. NC Department of Corrections
George Lennon, atty P
Raleigh, NC

Wallace Cowan v.
Nancy White, atty P
Hillsborough, NC

Richard Musolino v.
Richard Watson, atty P
Durham, NC

Angela Wilkerson/Donna Rudisill v. Mutterer
Ronnie Craig, atty D
Charlotte, NC

Phyllis Dixon v.
Emerson Thompson, atty D
Raleigh, NC

Abdul Shaheed v.
Bill McHenry, atty P
Detroit, Michigan

Jean Lucas v. John Williams et al.
Cressie Thigpen, atty D
Wake Co., NC

Ronnie Meeks v. John Crawford & Hinson
Frank Cassiano, atty P
Lenoir Co., NC

Isaiah Smith v.
Kathy Thomas, atty D
Raleigh, NC

Justice Limb v.
Robert Schuster, atty P
Jackson, Wyoming

Maria Hobbs v. Middletown Regional Hospital
David Johns, atty P
Cincinnati, Ohio

Michael Hardin v.
Andy Anderson, atty P
Wrightsville Beach, NC

Meghan Cantrell v Mina Yazdandakhsh
Dayton, Ohio
Richard Lawrence, atty P

Felshaw & Poling v Sheth
Durham, NC
Mike Millard, atty P

Bryant v.
Columbus, Ohio
Dave Patterson, atty D

Oldham v.
Columbus, Ohio
David Patterson, atty D

Ping v. Duro Bag
Atlanta, GA
Robert Shields, atty P

Winstead & Winstead v. Pletcher, Boothe et al
Johnston co, NC
Faison & Gillespie, attys P

Villanueva v. NC Natural Gas
Scotland Co, NC
Matthew Little, atty D

Joseph Kalil v.
Thomas Peterson III, atty P
Las Vegas, Nevada

Fabiola Anderson v. Allstate Insurance Co.
Gordon Lea, atty P
Dade Co., Florida

Michael Scotten v. Capital City Concrete Svcs
Cressie Thigpen, atty P
Raleigh, NC

Jason Whitley v. Ladd Furniture
Don Strickland, atty D
Raleigh, NC

Joanie Moren v. Delaney
William Fahres, atty P
San Francisco, California
Dean Leck v.
Robert Schuster, atty P
Jackson, Wyoming

Rhonda Braswell v. Florida Farm Bureau General Ins. Co.
Greg Page, atty P
Park City, Florida

Niall Hageman v.
Lance Block, atty P
West Palm Beach, Florida

Evie Bankov v. Otis Elevator Co.
Wade Byrd, atty P
Orange Co., NC

Tshombe Fisher v.
Maurice Heller, atty P
Columbus, Ohio

Tim Batchelor v. Timothy Dale Dewitt & DHL Airways
David Duffus, atty P
Duplin Co., NC

Ronald Bennett v. Willis Clarence Lassiter
Richard Watson, atty P
Durham, NC

Kayleigh Turner v.
Chris Speed, atty P
West Palm Beach, Florida

David Marquis Winston v.
Tyler Thompson, atty P
Louisville, Kentucky

Shaneka James v. Shands
David White, atty P
West Palm Beach, Florida

Maria Hobbs v.
Richard Lawrence, atty P
Cincinnati, Ohio

Paula Savery Forest v. Samuel Ramon Hughes & UPS
Truck Leasing
Mike Bailey, atty P
Mecklenberg Co., NC

Walter C. Erwin v.
William Lipscomb, atty P
Wilkesboro, NC

Randy Cox v.
Teague, Campbell, Dennis & Gorham D
Raleigh, NC

Wayne Teirny v.

Ken King, atty P
Jacksonville, NC

Pamela Hall v. USA
Richard Votta, atty- US Attorney's Office D
Raleigh, NC

Ilean Reams v.
Leslie O'Toole, atty P
Raleigh, NC

Jordan & Landon Jenkins v.
Christian Searcy, atty P
West Palm Beach, Florida

Darlene Taylor v.
Womble, Carlyle, Sandridge & Rice, law firm D
Charlotte, NC

Alexia Davis v.
William Norton, atty P
West Palm Beach, Florida

Machelle Graham v.
Amanda Martin, atty D
Raleigh, NC

Tonya Chapman v.
David Brumfield, atty P
Charleston, West VA

Bryant Wisehart v.
Tyler Thompson, atty P
Louisville, Kentucky

Crystal Collins v.
Brian Davis, atty P
Charlotte, NC

Bobby Martin v.
J.D. Prather, atty P
Raleigh, NC

Jerry Carter v.
Ruby Bullard, atty P
Fayetteville, NC

Virginia Edwards v.
Roberta Edwards, atty P
Greenville, NC

Austin Church v.
Richard Lawrence, atty P
Cincinnati, Ohio

Caitlin Kidd v.

Richard Lawrence, atty P
Cincinnati, Ohio

Texas v. Appleridge Group Home
Matthew Reinstra, atty
Austin, Texas

Llewellyn Williams v.
Linda Gangi, atty P
Conway, SC

September 9, 2002 Teresa Allen v. Roses Stores Inc.
Joy Brewer, Attorney- Cary, NC (Defendant)

September 26, 2002 Michelle Fecca v.
Lori Huckabee, Attorney-Orlando, Florida

October 16, 2002 Wendell Pruden v. University of North
Carolina
Bambee N. Booher, Attorney-Cary, NC (Defendant)

October 17, 2002 T.A.Taylor & Sons Seafood, Inc. Joseph
Lee Stabley,
Julia Stabley & Hartford Insurance Co. v. Continental Tire
North America, Inc..
Bradley Kutrow, Attorney Charlotte, NC (Defendant)

November 7, 2002 Teresa Ashburn v. Lowe's Motor
Speedway
Richard N. Watson, Attorney-Durham, NC (Plaintiff)

November 11, 2002 Del Register v. Wachovia Bank
H. George Kurani, Attorney-Charlotte, NC (Defendant)

November 13, 2002 Shannon Houchin v. Monarch
Environmental, et al
Tyler Thompson, Attorney- Louisville, Ky. (Plaintiff)

January 6, 2003 Timothy E. Greene v. Mack Brown and
General Motors Watauga County
Davis Duffus, Attorney- Greenville, NC.(Plaintiff)

January 6, 2003 Maurice Weller v. Tands Inc. and
Discovery Insurance
Leah L. King, Attorney-Jacksonville, NC (Plaintiff)

January 21, 2003 Lexi Fuchs(minor) v. Adventist Health
System/Sunbelt Inc. et al.
Earl L Denny, Jr., Attorney-West Palm Beach, Florida
(Plaintiff)

March 5, 2003 Jeffrey Brown v. Southern Concrete
Materials and The Hartford
XXXXXXX, Attorney-XXXXXXX()

March 10, 2003 Shelby Harris v. Alamance Regional
Medical Center, Inc.
Nancy P. Quinn, Attorney-Greensboro, NC (Plaintiff)

March 13, 2003 Kaitlin Ward (minor) v. Isaac Emerson
Murray, Jr.
Andrew A. Vanore III, Attorney-Raleigh, NC (Plaintiff)

March 24, 2003 Teresa Wagner v. Rex Healthcare
Dawn D. Raynor, Attorney-Raleigh, NV(Defendant)

March 26, 2003 Franklin Durham v. Hockaday Mechanical
Corporation
Frank Lawrence, Attorney-Elizabeth City, NC (Plaintiff)

April 29, 2003 Genia Rogers(minor) v. Sadlin & Autim,
Inc. d/b/a Term-X-Termite Control and Preston Sandlin
W. James Chandler, Attorney Charlotte, NC (Plaintiff)

May 15, 2003 William H. Baker v. Home Depot USA Inc.
& Grisham Corporation
Richard Watson, Attorney Durham, NC (Plaintiff)

June 12, 2003 Joette Williams v. Vail Resorts, Inc. et al.
Robert P. Schuster, Attorney Jackson, Wyoming
(Plaintiff)

July 24, 2003 Norman L. Clark v. Sir Walter Chevrolet
Bruce A. Hamilton, Attorney Raleigh, NC (Defense)

July 31, 2003 Armen Venwadjian v. Midas Auto Service
Experts
J.D. Prather, Attorney Raleigh, NC (Defense)

September 11, 2003 Ada Onwuka v Boddie Noell
Enterprises, Inc. and Frederick Spencer
W. Earl Taylor, Attorney Wilson, NC (Plaintiff)

September 25, 2003 Santiago Martinez v Comp USA and
Kemper Insurance Company
Karl E. Knudsen, Attorney Raleigh, NC (Plaintiff)

October 8, 2003 James Curtis Brooks and Audrey Brooks
v Saint Joseph Healthcare, Inc. d/b/a St. Joseph Hospital.
Et. Al.
Lee Friedland, Attorney Coral Gables, FL.(Plaintiff)

October 21, 2003 Alania Nicole Peaks v Christopher
Steve Naylor and Stanton House Fire and Rescue
Department, Inc.
Eliot Smith, Attorney Wilson, NC (Plaintiff)

October 22, 2003 Baker v Home Depot and Grisham Corporation
Richard Watson, Attorney Durham, NC (Plaintiff)

November 5, 2003 James A. Davis v. Hoke County Sheriff's Department
Robert C. Kerner, Attorney Raleigh, NC (Defense)

November 19, 2003 Norman L. Tripp v Brent Senior, M.D.
Tracy K. Lischer, Attorney Durham, NC (Plaintiff)

January 5, 2004 Lisa Williamson v. University Hospital, Inc. et al
Jill Gustafson Attorney Cincinnati, Ohio (Plaintiff)

January 22, 2004 Norman Clark v. Sir Walter Cheverlet
Bruce Hamilton, Attorney Raleigh, NC (Plaintiff)

February 3, 2004 Bonham, et al. v. Petaletti and Parker
James G Welsh, Jr., Attorney Winston-Salem, NC (Defense)

March 11, 2004 James J. Throgmorton(minor) v Kelly D. Clark, MD and Baptist Healthcare System, INC.
Rhoda Faller/Tyler Thompson, Attorneys Louisville, KY (Plaintiff)

March 23, 2004 Bryan Heath Baker & Susan D. Baker, et al v. Speedway, et al.
Ted Mackall, Jr., Attorney Greenville, NC (Plaintiff)

April 6, 2004 Melvin Broussard, Jr., v Americhem and Atlantic Mutual Insurance Company
C. Murphy Archibald, Attorney Charlotte, NC (Plaintiff)

April 7, 2004 Norman Patterson v. Salem Neurological Center, et al
Charles G. Monnett III, Attorney Charlotte, NC (Plaintiff)

April 28, 2004 Wayne Harrold and Brenda Harrold v. Cubic, Inc., Cubic Engineering, P.A., and Paul Ken Brooks
L. Cameron Caudle, Attorney Charlotte, NC (Defense)

May 11, 2004 Ann Charles v. Duke University
Heidi G. Chapman, Attorney Chapel Hill, NC (Plaintiff)

May 18, 2004 Bryan Heath Baker, Susan D. Baker, et al. v. Speedway Motorsports, Inc. et al.
Marvin K. Blont, Jr., Attorney Greenville, NC (Plaintiff)

June 7, 2004 Chandler Jent, et al. v. Gregory Ellis, et al.
Ronald Manasco, Attorney Durham, NC (Plaintiff)

June 16, 2004 Andreozzi, et al v. Brownell, et al.
Mark Brice, Attorney Providence, RI (Plaintiff)

June 30, 2004 Dashamir Rushiti v. Modern Toyota
Don Bumgardner, Attorney Gastonia, NC (Plaintiff)

July 6, 2004 Brandon Lambert v. U.S. Xpress Enterprises, Inc., Issac Wolfe, and Carl Edward Crowder
S. Randall Hood, Attorney, Rock Hill, SC (Plaintiff)

July 7, 2004 NC State Board of Dental Examiners v. John R. Hall, D.D.S.
Emerson M. Thompson, III, Attorney Charlotte, NC (Defense)

October 21, 2004 Jacob Ethan Tackett v. Yong D. Song, M.D., et al.
Jennifer Lawrence, Attorney, Cincinnati, OH (Plaintiff)

October 25, 2004 Larry D. Phillips v. Overton Contractors
Andrew J. Whitley, Attorney Wilson, NC (Plaintiff)

December 7, 2004 Mary E. Taylor v. Union Butterfield
Robin Terry, Attorney Raleigh, NC (Defense)

January 4, 2005 Daniel Kosek v. Karen Barnes
Charles G. Monnett, III, Attorney, Charlotte, NC (Plaintiff)

December 17, 2004 Concetta Parker v. Mike Taylor
Mary Hulett, Attorney Raleigh, NC (Defense)

January 19, 2005 Charles Sampson v. Pilkington North America, Inc.
Heidi G. Chapman, Attorney Chapel Hill, NC (Plaintiff)

January 20, 2005 Courtney Kerr v. Hilton Lee Lewis
Donald S. Higley, Attorney Greenville, NC (Plaintiff)

January 25, 2005 Lisa Monti v. Naomi Wenkert, ET Al
Christopher Bernard, Attorney Bridgeport, CT. (Plaintiff)

February 2, 2005 Courtney Kerr v. Hilton Lee Lewis
Donald S. Higley, Attorney Greenville, NC (Plaintiff)

March 15, 2005 Ali D. Al-Darajay v. Becton Dickinson and Company
Jeffrey Linder, Attorney Raleigh, NC (Defense)
March 24, 2005 Emile G. Meyer, III v. Shands Teaching Hospital and Clinics, Inc.
Eric P. Gibbs, Attorney Orlando, FL (Defense)

April 4, 2005 Deborah Gilbert and Wayne Gilbert v. Wal-Mart Stores, Inc.
Phillip Adkins, Attorney Durham, NC (Plaintiff)

April 5, 2005 St. Clair Locke v. Justus Builders
Edwin P. Martin, Jr., Attorney Columbia, SC (Defense)

April 21, 2005 Joseph C. Minnotti v. Joseph J. Keeley,
M.D., et al
Patricl Telan, Attorney Orlando, FL (Defense)

May 2, 2005 Marshall v. Nissan
Earl L. Denney, Jr., Attorney
West Palm Beach, FL (Plaintiff)

May 3, 2005 Schwab v. Nissan
Michael A. Chovanec, Attorney
Memphis, TN (Plaintiff)

May 31, 2005 Andrews v. Bush Industries, et. al
Guy Crabtree, Attorney
Durham, NC (Plaintiff)

June 1, 2005 Marshall v. Nissan
Earl L. Denney, Jr., Attorney
West Palm Beach, FL. (Plaintiff)

June 16, 2005 Stanziano v. Miami Valley Hospital, et al.
Jill Gustafson, Attorney Cincinnati, OH (Plaintiff)

September 7, 2005 Video depo. Eliz.Shelton v.Pepsico,
Inc., and bottling group. Atty. Randall Trost, P.C.2099
Langhorne Rd. Lynchburg, VA 24501

Sept. 29th 2005, (WC) Depo.James Roberson Teague and
Campbell 1621 Midtown PL. Raleigh,NC 27609
919-873-0166

Oct. 31, 2005, Depo. Tiffiny Anderson and Roger S.
Anderson v, United States of America, Sharon Wilson,
Assistant US Attorney, Raleigh, NC (Defendant)

Expert Testimony -- C. Thomas Gualtieri, MD

Monta Troutman v. USA
Donald Strickland, atty P
Raleigh, NC

Therese Hunter v.
Lance Block, atty P
West Palm Beach, Florida

Lawson v. MTL, et al
Honolulu, Hawaii

Fei v. Averitt Express
Rex Smith, atty D
Atlanta, GA

Carlee Bailey v.
Richard Lawrence, atty P
Cincinnati, Ohio

Laura Jackson v. Eugene Jackson
Jon Davey, atty P
Virginia

Warren Weatherington v.
John Shipley, atty P
West Palm Beach, Florida

Whitney Kirk v. Carolina Tire Company
Bruce Hoof, atty P
Person Co., NC

Mickey Lanham v.
Ron Waicukauski, atty D
Indianapolis, Indiana

Amedure v. Jenny Jones
Ven Johnson, atty P
Detroit, Michigan

Nathaniel Abrahamson
Geoffrey Fieger, atty P
Detroit, Michigan

Joanne Thomas v. Wal Mart
Michael Washburn, atty D
Greenville, NC

Derreck Vennard v.
Nancy Meyers, atty D
Raleigh, NC

Randau v. Food Lion
Richard Watson, atty P
Durham, NC

Kern v. University of Michigan Medical Center
Geoffrey Fieger, atty P
Detroit, Michigan

Wyatt v. Poundstone
Rick Trawick, atty D
Montgomery, Alabama

Tonya Chapman v.
David Brumfield, atty P
Charleston, West Virginia

Gerry Hancock v. USA
Dennis Duffy, atty D US Attorney's Office
Raleigh, NC

Turner v. Arnold Palmer Children's Hospital
Searcy, Denney, Scarola, Barnhart & Shipley, attys P
West Palm Beach, FL

Justice Limb v.
Robert Schuster, atty P
Jackson, Wyoming

Shaneka James v Shands
David White, atty P
West Palm Beach, Florida

Cody Romine v.
Richard Lawrence, atty P
Cincinnati, Ohio

Antone Bennett v.
Jill Gustafson, atty P
Cincinnati, Ohio

Joseph Huff v.
Dick Lawrence, atty P
Cincinnati, Ohio

Dennis Mosely v.
Searcy, Denney, Scarola, Barnhart & Shipley P
West Palm Beach, Florida

Keith Johnson v.
Searcy, Denney, Scarola, Barnhart & Shipley P
West Palm Beach, Florida

Meredith Roberts v.
Richard Lawrence, atty P
Cincinnati, Ohio
Cody Clark v.

Richard Lawrence, atty
Cincinnati, Ohio

Carlee Bailey v.
Richard Lawrence, atty P
Cincinnati, Ohio

April Perini v. Blake Memorial
Searcy, Denney, Scarola, Barnhart & Shipley, attys P
West Palm Beach, Florida

Ausin Gautier v.
Ronnie Mitchell, atty P
Fayetteville, NC

Jacob Belote v.
Lance Block, atty, P
West Palm Beach, Florida

David Marquis Winston v.
Tyler Thompson, atty. P
Louisville, Kentucky

Kyle Searcy v.
Chris Searcy, atty P
West Palm Beach, Florida

Caitlin Kidd v. Children's Hospital Medical Center
Richard Lawrence, atty P
Cincinnati, Ohio

Niall Hageman v. Michelson
Searcy, Denney, Scarola, Barnhart and Shipley P
West Palm Beach, Florida

Dean Leck v.
Robert Schuster, atty P
Jackson, Wyoming

Bryant Wisehart v.
Tyler Thompson, atty P
Louisville, Kentucky

Jason Wade v.
Searcy, Denney, Scarola, Barnhart & Shipley, atty P
West Palm Beach, Florida

Devon Athey v. University Medical Center
Chris Searcy, atty P
West Palm Beach, Florida

Dylon Fischer v. Hunt
James Nance, atty P
West Palm Beach, Florida

Austin Church v.
Richard Lawrence, atty P
Cincinnati, Ohio

Landon/Jordan Jenkins v.
Christian Searcy, atty P
West Palm Beach, Florida

J.W. Taylor
Attorney Michael Washburn
PO Box 1729
Raleigh, NC 27602

Davis & McCabe
1115 Hillsborough ST.
Raleigh, N.C. 27603

Expert Testimony

May 8, 2003 Genia Rogers(minor) v Sandlin & Autim, Inc. d/b/a Term-X-Termite Control and Preston Sandlin W. James Chandler, Attorney Charlotte, NC (Plaintiff)

July 1, 2003 Jeffrey Scott Archer v. Dora Carter Frost and Lindwood Frost
Danny Glover, Jr., Attorney Elizabeth City, NC (Plaintiff)

September 2, 2003 Kenneth Lee Reitzel, Jr., v. Cataba Memorial Hospital, et al
Henry L. Anderson, Jr. Wrightsville Beach, NC (Plaintiff)

December 5, 2003 Joette Williams v. Vail Resortd, Inc. et al
Robert P. Schuster, Attorney Jackson, Wyoming (Plaintiff)

December 17, 2004 Baker v. Home Depot, et al
Richard Watson, Attorney Durham, NC (Plaintiff)

January 26, 2005 Concetta Parker v. Mike Taylor
Mary Hulett, Attorney Raleigh, NC (Defense)

March 3, 2005 Daniel Kosek v. Karen Barnes
Charles Monnett, III, Attorney Charlotte, NC (Plaintiff)

March 4, 2005 Lisa Monti v. Naomi Wenkert ET AL
Christopher Bernard, Attorney Fairfield, CT. (Plaintiff)

May 10, 2005 Joseph Minotti v Joseph Keeley, MD
Patrick Telan, Attorney Orlando, FL. (Plaintiff)

May 20, 2005 Deborah Gilbert and Wayne Gilbert v. Wal-Mart Stores, Inc.
Philip S. Adkins, Attorney Durham, NC (Plaintiff)

Law PO Box 12247 /Roanoke VA 24024. telephone 540-343-2451 fax 540-345-6417

12/05, Deposition, Daniel Coleman, Attorney Edward Meeks Jr. PO Box 720 Leesburg Ga. 31763
Plaintiff

12/14/05 Deposition, Kyle Smith Attorney Jill Gustafon, The Lawrence Firm 425 Walnut street
Cincinnati Ohio 45202-3913
513-651-4130 Plaintiff

1/16/06, Terry Smith Attorney Davis & McCabe
1115 Hillsborough St. Raleigh, NC 27603
919-833-3370
Plaintiff

1/17/06, Joyce Miller, Attorney Henson and Fuerst, PA
2501 Blue Ridge Rd. Raleigh, NC 27607
919-781-1107 Plaintiff

Depositions

August 10, 2005 pre-depo, depo Steven Sixbey v Manford
D. Hyer, Law Firm Wooten Hart PLC The Business of

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY,
AS SHE IS THE ADMINISTRATRIX OF
THE ESTATE OF AWILDA SANTIAGO,
ESSEX PROBATE COURT DOCKET
#03P-2499ADI, P/P/A VERONICA
ROSARIO AND CHRISTINA SANTIAGO,
AND AS SHE IS THE ADMINISTRATRIX
OF THE ESTATE OF JOSE SANTIAGO,
BERLIN (CONNECTICUT) PROBATE
COURT, CASE #03-0713

Plaintiff

v.

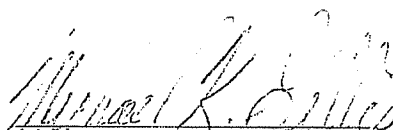
RARE HOSPITALITY INTERNATIONAL,
INC. d/b/a LONGHORN STEAKHOUSE

Defendant

Civil Action Number:
05-CV-10617MLW

RULE 26 REPORT OF ROBERT PANDINA, PH. D.

The Defendant,
By Its Attorneys,



Michael K. Gillis, Esq.

BBO# 543551

Neil D. Schnurbach, Esq.

BBO# 664534

GILLIS & BIKOFSKY, P.C.

1150 Walnut Street

Newton, MA 02461

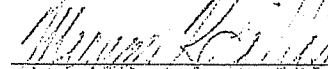
Tel. 617-244-4300

CERTIFICATE OF SERVICE

I, Michael K. Gillis, of Gillis & Bikofsky, P.C., attorneys for Rare Hospitality International, Inc., hereby certify that on February 14th, 2007, a true copy of the above document was served upon all counsel of record by in hand service.

RARE HOSPITALITY INTERNATIONAL, INC.
d/b/a LONGHORN STEAKHOUSE

By its Attorneys,

A handwritten signature in dark ink, appearing to read "Michael K. Gillis", is written over a horizontal line.

Michael K. Gillis, Esq.

GILLIS & BIKOFSKY, P.C.

1150 Walnut Street

Newton, MA 02461

(617) 244-4300

BBO# 543551

27-Jan-07 Robert J. Pandina, Ph.D.

Attorney	Case with trial testimony
Barrow	Verni v Stevens
Brause	St. v Koskovich
Cassidy	St. v Robertson
Cernadas	St. v Banks
Erickson	Strauss
Grady	St. v Atwater
Hammerslg	St. v St.Fleur
Hanna	Watson
Heavy	Fameaux v Pelli
Hrawlich	Royal v Jersey Shore Profrssional Baseball
Jimenez	St. v Vaughn-Owne
Kim	Poles v AIC
Luskin	Mulligan
McFadden	St. v Roberts
Neafsey	St. v Hagin
Sapolnick	MAG Entertainment v Cheerleaders
Sewitch	St v Shelley
Sewitch	St. v Toth
Smith	St. v McIntosh
Soliman	St. v Smith
Van Wyk	St. v Cooper
Van Wyk	St. v Alvarez
Zwibel	Dawidowicz

Attorney	Case with Deposition
Hobbs	Yatrofsky v Moss
Kinum	Moloney v Villarant
Luskin	Mulligan
Madin	Glynn v Bankers Life
Mazie	Vernie v Stevens
Mastin	Weaver v Nicholas

Albert Farrah

From: Albert Farrah
Sent: Tuesday, April 17, 2007 1:47 PM
To: 'Michael K. Gillis, Esq.'
Cc: 'farrahlaw'
Subject: FW: Rosario, et al v. RARE (Expert Reports and Deposition Dates)

Importance: High

Michael, without waiving any rights, I am again requesting that your expert reports, which are deficient, be supplemented by setting forth sufficient, specific details about prior testimony so that I can investigate that testimony. Copies of all of my prior communications to you on this subject are attached. I am also, again, requesting that you supply me with convenient dates for depositions of your liability experts.

Are you filing a motion for summary judgment? It is now the 17th of April, and mediation is less than 30 days away. Were I to receive such a motion tomorrow, I could not guarantee to get you even a draft response by the May 16 mediation start date. Moreover, we agreed I would have 60 days from my receipt of a MSJ to file my opposition. The court has scheduled a hearing for June 6, so, at the very least, it appears we will need to seek a new date from Justice Bowler. If you are filing a MSJ, please get it out immediately.

We also need to agree on dates for depositions of non expert and damages expert witness depositions, in the event we can't successfully mediate the case. Right now, the entire month of July looks good for me. Please respond.

Al Farrah

From: Pamela Peck
Sent: Tuesday, March 27, 2007 3:36 PM
To: Michael Gillis (E-mail)
Cc: 'nschnurbach@gillisandbikofsky.com'; Albert Farrah
Subject: Rosario, et al v. RARE (Expert Reports and Deposition Dates)
Importance: High

Dear Michael,

On March 2, 2007, Attorney Farrah sent you two e-mails concerning your experts. Copies of those e-mails are attached. On March 12, 2007, I sent you a follow up e-mail concerning deficiencies in your expert reports. A copy is attached. Neither Attorney Farrah nor I has heard anything from you. Please let me know immediately whether or not you intend to provide the requested information and to supply agreeable dates for the depositions of your liability experts.

Sincerely,
Pamela M. Peck
Assistant to Albert L. Farrah, Jr., Esq.



Rosario v. RARE
(Liability Exp...



FW:



FW:

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To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purposes of avoiding U.S. tax penalties.

Albert Farrah

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Sent: Tuesday, March 27, 2007 3:36 PM
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Cc: 'nschnurbach@gillisandbikofsky.com'; Albert Farrah
Subject: Rosario, et al v. RARE (Expert Reports and Deposition Dates)

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Sincerely,
Pamela M. Peck
Assistant to Albert L. Farrah, Jr., Esq.



Rosario v. RARE
(Liability Exp...



FW:



FW:

FARRAH LAW OFFICES - CONFIDENTIALITY NOTICE: This e-mail and any attachments thereto, is intended only for the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by return e-mail and permanently delete the original and any copy of this e-mail message and any printout thereof.

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Albert Farrah

From: Pamela Peck
Sent: Monday, March 12, 2007 9:21 AM
To: Michael Gillis (E-mail)
Cc: 'nschnurbach@gillisandbikofsky.com'; Albert Farrah
Subject: Rosario v. RARE (Liability Expert Depositions)

Importance: High

Dear Michael,

Please supply me with dates for your liability experts' depositions in early May. In addition, will you be supplying me with your expert's prior testimony as requested in my earlier e-mail? Please contact me if you have any questions.

Sincerely,
Albert L. Farrah, Jr.
pmp
Dictated, but not read

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Albert Farrah

From: Albert Farrah
Sent: Friday, March 02, 2007 3:41 PM
To: 'Michael K. Gillis, Esq.'
Subject: RE:

Also, Dr. Gualtieri's disclosure regarding other testimony, while superior to Pandina's, really doesn't help me. He does not list the court in which any of the cases he has testified is located, frequently listed the name of only one party to the litigation, and failed, in over half the cases, to set forth when he testified.

Mr. Burke's disclosure is also insufficient. No case names, no courts named, etc.

Mr. Guiliano and Mr. Rooney have not listed any cases in which they have given testimony in the last four years. Is this so? Please confirm. If not, please get me appropriate disclosures.

Please supply me with all requested information at your earliest convenience.

From: Michael K. Gillis, Esq. [mailto:mgillis@gillisandbikofsky.com]
Sent: Friday, March 02, 2007 3:04 PM
To: Albert Farrah
Cc: 'Michael K. Gillis, Esq.'
Subject: RE:

That would be fine. Thank you, Michael.

From: Albert Farrah [mailto:alf@corwinlaw.com]
Sent: Friday, March 02, 2007 2:40 PM
To: mgillis@gillisandbikofsky.com
Cc: Pamela Peck
Subject:

Can we resume Marcantonio's deposition on Friday, 3/9 at 9 am? I need to be in my office by two, and can maybe push that back to three, so I think that might work. Al Farrah

FARRAH LAW OFFICES - CONFIDENTIALITY NOTICE: This e-mail and any attachments thereto, is intended

4/27/2007

Albert Farrah

From: Albert Farrah
Sent: Friday, March 02, 2007 3:31 PM
To: 'Michael K. Gillis, Esq.'
Subject: RE:

It is impossible to tell from his report where Robert Pandina has testified. Please get me a disclosure that complies with the rule at your earliest convenience, as well as possible dates for his deposition. Thank you.

From: Michael K. Gillis, Esq. [mailto:mgillis@gillisandbikofsky.com]
Sent: Friday, March 02, 2007 3:04 PM
To: Albert Farrah
Cc: 'Michael K. Gillis, Esq.'
Subject: RE:

That would be fine. Thank you, Michael.

From: Albert Farrah [mailto:alf@corwinlaw.com]
Sent: Friday, March 02, 2007 2:40 PM
To: mgillis@gillisandbikofsky.com
Cc: Pamela Peck
Subject:

Can we resume Marcantonio's deposition on Friday, 3/9 at 9 am? I need to be in my office by two, and can maybe push that back to three, so I think that might work. Al Farrah

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To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used,

4/27/2007

GILLIS & BIKOFSKY, P.C.

Attorneys At Law
1150 Walnut Street
Newton, Massachusetts 02461

Tel: (617) 244-4300
Fax: (617) 964-0862

Michael K. Gillis
David R. Bikofsky

Joseph C. Borsellino
Christopher M. Dailey
Neil D. Schnurbach

April 18, 2007

VIA REGULAR MAIL

Albert L. Farrah Jr., Esq.
One Washington Mall, 5th Floor
Boston, MA 02108

RE: Nancy Rosario, et al,
v. Rare Hospitality International, Inc., d/b/a Longhorn Steakhouse
C.A. No.: 05CV10617

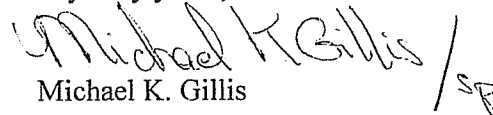
Dear Attorney Farrah:

In response to your prior correspondence concerning the Rule 26 disclosures of Dr. Pandina, Dr. Burke and Dr. Gualtieri, it is my opinion that they are in fact compliant with the Federal Rules of Civil Procedure. Rule 26 specifically states that the expert must give "a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years." Fed.R.Civ.P. 26(2)(B). Dr. Pandina lists all cases in which he testified, as do Dr. Burke and Dr. Gualtieri and Dr. Giuliano. The experts have informed me that these disclosures have been accepted in every jurisdiction in which they have testified. In fact, I believe you may be the first attorney to question their disclosures.

Your requests fly in the face of your own experts' disclosures. Dr. Benjamin comes immediately to mind. Should you require further disclosure from our experts, I suggest you get your own experts' disclosures in line first. I doubt that any of your experts, with the possible exceptions of Hebben and Lloyd Price, have disclosures that are more compliant than the expert disclosures that we have forwarded to you.

Lastly, please confirm Dr. Pandina's deposition for Friday, May 11, at his office at Rutgers University, 607 Allison Rd, Piscataway, New Jersey. His availability is very limited, so please do not delay. Also, again, please provide us with Prices' and Hebben's availability in the upcoming days.

Very truly yours,


Michael K. Gillis

MKG:nhl

Albert Farrah

From: Michael K. Gillis, Esq. [mgillis@gillisandbikofsky.com]
Sent: Wednesday, April 18, 2007 2:22 PM
To: Albert Farrah
Cc: 'Michael K. Gillis, Esq.'
Subject: RE: Rosario, et al v. RARE (Expert Reports and Deposition Dates)

Dear Al:

I received your email today. As you know, I am on vacation as this school vacation week. We discussed coupling my vacation with a trip south to finish the out-of-state depositions, however, it did not work for your schedule as you stated that you had a trial. I also called you last week and left you a lengthy message which you seem to ignore in your email. I informed you that we cannot file our motion to strike or our motion for summary judgment until after Benjamin's deposition was complete; in fact, you agreed in Benjamin's deposition give us 60 days after Benjamin's deposition to file our motion and you would respond to our motion within 30 days of receipt of our motion. Our motions are essentially complete, so we would only need a few days after receiving the transcript in order to file same, however, you need to get Benjamin scheduled in order to conclude his deposition.

You made it quite clear that you wanted to ask questions of Benjamin before concluding the deposition. If you wish to waive any questions, I would be satisfied deeming the deposition concluded at this point and filing our motions within a week. If you want to ask him questions, please schedule his deposition immediately so that we can file our motions.

As far as our expert's disclosures are concerned, I believe them to be adequate. I will forward to you a letter under separate cover concerning same.

As for your experts, most of them I could wait to depose until after the mediation, but I need to depose Hebben and Price, in that order, before the mediation. The more experts that could be deposed prior to the mediation, the better I believe it would be for you so that my client can have a more informed opinion on the case upon which to determine what settlement offers, if any, they wish to make at mediation. Let me know what dates between now and the mediation work for you and your experts. It would be best to conclude both by May 10 so that I can get a copy of the transcripts to my clients by the mediation.

Lastly, I see no reason to delay the hearing before Bowler. I assume you have just a few questions for Benjamin, so I doubt we need more than an hour of his time. I will make myself available nights and weekends if necessary to conclude his deposition and get the matter concluded.

Again, I will be out of the office until Monday but will be answering emails. If you would like me to call you, just send me an email.

Sincerely,
Michael Gillis

From: Albert Farrah [mailto:alf@corwinlaw.com]
Sent: Tuesday, April 17, 2007 1:47 PM

4/29/2007

To: Michael K. Gillis, Esq.
Cc: farrahlaw
Subject: FW: Rosario, et al v. RARE (Expert Reports and Deposition Dates)
Importance: High

Michael, without waiving any rights, I am again requesting that your expert reports, which are deficient, be supplemented by setting forth sufficient, specific details about prior testimony so that I can investigate that testimony. Copies of all of my prior communications to you on this subject are attached. I am also, again, requesting that you supply me with convenient dates for depositions of your liability experts.

Are you filing a motion for summary judgment? It is now the 17th of April, and mediation is less than 30 days away. Were I to receive such a motion tomorrow, I could not guarantee to get you even a draft response by the May 16 mediation start date. Moreover, we agreed I would have 60 days from my receipt of a MSJ to file my opposition. The court has scheduled a hearing for June 6, so, at the very least, it appears we will need to seek a new date from Justice Bowler. If you are filing a MSJ, please get it out immediately.

We also need to agree on dates for depositions of non expert and damages expert witness depositions, in the event we can't successfully mediate the case. Right now, the entire month of July looks good for me. Please respond.

Al Farrah

From: Pamela Peck
Sent: Tuesday, March 27, 2007 3:36 PM
To: Michael Gillis (E-mail)
Cc: 'nschnurbach@gillisandbikofsky.com'; Albert Farrah
Subject: Rosario, et al v. RARE (Expert Reports and Deposition Dates)
Importance: High

Dear Michael,

On March 2, 2007, Attorney Farrah sent you two e-mails concerning your experts. Copies of those e-mails are attached. On March 12, 2007, I sent you a follow up e-mail concerning deficiencies in your expert reports. A copy is attached. Neither Attorney Farrah nor I has heard anything from you. Please let me know immediately whether or not you intend to provide the requested information and to supply agreeable dates for the depositions of your liability experts.

Sincerely,

Pamela M. Peck

Assistant to Albert L. Farrah, Jr., Esq.

<<Rosario v. RARE (Liability Expert Depositions)>> <<FW: >> <<FW: >>

FARRAH LAW OFFICES - CONFIDENTIALITY NOTICE: This e-mail and any attachments thereto, is intended only for the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments thereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me by return e-mail and permanently delete the original and any copy of this e-mail message and any printout thereof.

To ensure compliance with requirements imposed by the U.S. Internal Revenue Service, we inform you that any

4/29/2007

U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purposes of avoiding U.S. tax penalties.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF AWILDA SANTIAGO, ESSEX)
PROBATE COURT DOCKET #03P-2499AD1 and)
AND AS SHE IS THE ADMINISTRATRIX OF)
THE ESTATE OF JOSE SANTIAGO, BERLIN)
(CONNECTICUT) PROBATE COURT,)
CASE #03-0713 AND NANCY ROSARIO AND)
MICHAEL MILLER, AS GUARDIANS OF)
CHRISTINA SANTIAGO AND VERONICA)
ROSARIO, ESSEX PROBATE COURT DOCKET)
#06p-0507GM)

Plaintiffs

v.)

RARE HOSPITALITY INTERNATIONAL, INC.)
d/b/a LONGHORN STEAKHOUSE)

Defendant

Civil Action #05-CV-10617MLW

RULE 26 REPORT OF DAVID M. BENJAMIN, PH.D.

Plaintiffs
By their attorney,



ALBERT L. FARRAH, JR., ESQ.
One Washington Mall, 5th Floor
Boston, MA 02108
(617) 742-7766
B.B.O. #159340


Date: October 31, 2006

CERTIFICATE OF SERVICE

SUFFOLK, SS

October 31, 2006

A copy of the Rule 26 Report of Dr. David M. Benjamin, Ph.D. was today HAND DELIVERED to Michael Gillis, Esq., Gillis & Bikofsky, P.C., 1150 Walnut Street, Newton Highlands, MA

A handwritten signature in black ink, appearing to read 'ALF', is written above a horizontal line.

Albert L. Farrah, Jr., Esq.

Commonwealth vs. English; Salem Superior Court, 10/12/06; For Defendant – Widmark calculations of blood ethanol; impairing effects of toxic organic chemicals.

Commonwealth vs. Roster; Wrentham District Court, 7/18/06; For Defendant
Interpretation of urine and drug test results

Commonwealth vs. White; Norfolk Superior Court, 7/7/06; For Defendant – cocaine;
Urine drug screens

Commonwealth vs. Jenkins; Suffolk Superior Court, 7/7/06; For Defendant;
analysis of cocaine;

Commonwealth vs. Decarlo; Cambridge District Court, 1/11/06; For Defendant
Effects of illicit drugs

Commonwealth vs. Doyle; Middlesex Superior Court, 2/1/06; For Defendant
Effects of illicit drugs

Commonwealth vs. Perella; Middlesex Superior Court, 1/5/06; For Defendant
Effects of oral anti-diabetic medication

Doucette vs. Abramofsky; Suffolk Superior Court, 11/05; For Plaintiff
Dram Shop -Widmark calculations of blood ethanol

Rowley vs. Tripathi; Deposition – Maryland Superior Court, 10/10/05; For Defendant
Medical Negligence involving prescription drugs

Commonwealth vs. Maurice Evans; Dedham District Court, 9/23/05; For Defendant
Widmark calculations of blood ethanol

Commonwealth vs. Annesc; Hingham District Court, 6/28/05; For Defendant - OUI

Commonwealth vs. Jerome Jones; Middlesex Superior Court, 9/16/05; For Defendant
Effects of MDMA and amphetamines

United States vs. Michelle Evans; U.S. District Court, Boston, MA, 9/13/05;
For Defendant – Interpretation of serial urine screens for THC

Callais vs. Main Street Brewery, Deposition 10/28/05; For Plaintiff
Dram Shop -Widmark calculations of blood ethanol

Commonwealth vs. Mitrano; Cambridge District Ct., 8/12/05; For Defendant

Reynolds vs. GBR Electric, Inc. and Northern Adjusters, Inc.; Alaska Workers' Compensation Board; Deposition by Phone 2/05; Phone Testimony for Workers'

Compensation Board 4/7/05; For Claimant. Interpretation of blood ethanol and methanol levels.

Chartier vs. Dow; Deposition - 2004, Polk County, FL; For Plaintiff
toxicity of organophosphates

Commonwealth vs. Gava; Concord District Court, 2004; For Defendant -OUI

Fullerson vs. Berry; California Superior Court; Deposition 10/14/03; Trial 4/04; For Plaintiff – Combined toxicities of lidocaine and bupivacaine

In the matter of Patricia A. McGeedy, deceased; Superior Court of New Jersey, Trial 2004; For Plaintiff Effects of prescription drugs on cognitive abilities.

Commonwealth vs. Robertson; Quincy District Court, 2004; For Defendant

United States vs. Brown; U.S. District Court MA Springfield, 8/04; For Defendant
Differences among “crack”, free base, and cocaine hydrochloride.

Peggy Cooper Cafritz vs. Sibley Memorial Hospital, et al; Superior Court of the District of Columbia; Deposition 2003; For Defendant toxicity of glucocorticoids

Commonwealth vs. Petrin; Trial Court of Massachusetts, District Court Department, 2003; For Defendant

Joseph Albert vs. Gus and Paul's Tavern; Lowell Superior Court; 3/31/03; For Defendant
Dram Shop -Widmark calculations of blood ethanol

McGrail, et al vs. Harley-Sanford Post 4368, VFW of the U.S.; Trial 2002/2003; For Defendant Dram Shop -Widmark calculations of blood ethanol

Hannah Christopher vs. Barkin Scrap Iron, et al; Michigan, Deposition 2002; For Defendant Effects of heroin withdrawal

In the matter of the Estate of Madeleine L. Stockdale, deceased; Superior Court of New Jersey, Chancery Division; Trial 2002; For Plaintiff Effects of prescription drugs on cognitive abilities.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF AWILDA SANTIAGO, ESSEX)
PROBATE COURT DOCKET #03P-2499AD1 and)
AND AS SHE IS THE ADMINISTRATRIX OF)
THE ESTATE OF JOSE SANTIAGO, BERLIN)
(CONNECTICUT) PROBATE COURT,)
CASE #03-0713 AND NANCY ROSARIO AND)
MICHAEL MILLER, AS GUARDIANS OF)
CHRISTINA SANTIAGO AND VERONICA)
ROSARIO, ESSEX PROBATE COURT DOCKET)

Civil Action #05-CV-10617MLW

Plaintiffs

v.

RARE HOSPITALITY INTERNATIONAL, INC.)
d/b/a LONGHORN STEAKHOUSE)

Defendant

CERTIFICATION OF ALBERT L. FARRAH, JR.

1. My name is Albert L. Farrah, Jr. At all times pertinent hereto, I have acted as counsel to the plaintiffs in the above matter.

2. I certify under Local Rule 7.1 that I have this day conferred with Neil Schnurbach, counsel for the defendant, in an effort to resolve or narrow issues relating to my claim that the prior testimony portions of the reports of his experts, William Burke, Thomas Gualtieri and Robert Pandina are insufficient, and that we were unable to resolve this dispute.

Certification of Albert L. Farrah, Jr.
5/1/07


ALBERT L. FARRAH JR., ESQ.

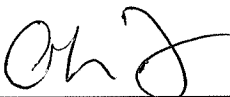
Date: May 1, 2007

CERTIFICATE OF SERVICE

SUFFOLK, SS

May 1, 2007

A copy of Certification of Albert L. Farrah, Jr. was today emailed and mailed, postage prepaid to Michael Gillis, Esq., Gillis & Bikofsky, P.C. 1150 Walnut Street, Newton Highlands, MA 02461.


Albert L. Farrah, Jr., Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NANCY ROSARIO, INDIVIDUALLY, AS)
SHE IS THE ADMINISTRATRIX OF THE)
ESTATE OF AWILDA SANTIAGO, ESSEX)
PROBATE COURT DOCKET #03P-2499AD1 and)
AND AS SHE IS THE ADMINISTRATRIX OF)
THE ESTATE OF JOSE SANTIAGO, BERLIN)
(CONNECTICUT) PROBATE COURT,)
CASE #03-0713 AND NANCY ROSARIO AND)
MICHAEL MILLER, AS GUARDIANS OF)
CHRISTINA SANTIAGO AND VERONICA)
ROSARIO, ESSEX PROBATE COURT DOCKET)

Civil Action 05-CV-
10617MLW

Plaintiffs

v.

)
RARE HOSPITALITY INTERNATIONAL, INC.)
d/b/a LONGHORN STEAKHOUSE)
Defendant)

**PLAINTIFFS' MOTION TO COMPEL RESPONSIVE DISCLOSURE OF PRIOR
EXPERT TESTIMONY AND FOR ATTORNEY'S FEES, AND MEMORANDUM
OF REASONS WHY THE MOTION SHOULD BE GRANTED**

Because the disclosures of prior deposition and trial testimony of RARE's experts William Burke, Robert Pandina, and Thomas Gualtieri are plainly inadequate on their face, and cannot be argued to be otherwise, plaintiffs move that the court order each such expert to supply plaintiffs, within 10 days of this Court's order, responsive and meaningful disclosures of prior expert testimony, complying in all respects with the requirements of Fed. R. Civ. P. Rule 26(a)(2).¹ Such disclosures should at a minimum include, in any matter where expert trial or deposition testimony was given in the last

¹ Plaintiffs' motion is made without waiving any rights to seek further relief from the Court -- including motions to strike reports and testimony -- regarding these, and defendant's other, expert witnesses, concerning, among other things, the adequacy of their disclosures or any other aspect of their proposed testimony.

four years, case captions with the complete names of all parties, court name and location, docket number, the dates of testimony, and the attorney for whom the expert was hired. Plaintiffs also move for an award of their reasonable attorney's fees incurred in bringing this motion, pursuant to Fed. R. Civ. P., Rule 37(a).

Background Facts

This is a dram shop action arising out of an accident late in the evening of September 26, 2003 on Route 495 in Westford, Massachusetts in which Jose Santiago and his daughter, Awilda, were killed and two of his other daughters, Veronica Rosario and Christina Santiago, suffered enormous, life altering injuries. Jeffrey Southworth, the driver of the truck that crashed while traveling at over 100 miles per hour into the rear of the Santiago motor vehicle, was drinking heavily at the defendant's Leominster, Massachusetts Longhorn Steakhouse (the "Leominster Longhorn") that evening, and as a result, was highly intoxicated at the time of the accident.²

Background of Dispute

. RARE served the Rule 26 reports of its damages experts Burke, Pandina and Gualtieri on plaintiffs on January 30, 2007. On four separate occasions since March 2, 2007, plaintiffs have, by email, attempted in good faith to secure from RARE intelligible information about those experts' prior testimony. Plaintiffs requested by emails of March, 2; March 12; March 27 and April 17, 2007 that RARE provide appropriate information about the prior expert testimony of these witnesses. On April 17, 2007 RARE finally responded, claiming its experts disclosures of prior testimony were in all

² Southworth was subsequently convicted of various accident-related charges, including motor vehicle homicide and operating under the influence of intoxicating alcohol. He is currently serving prison sentences of not more than twenty (20), nor less than twelve (12), years and, from and after that sentence, a term of not more than five (5), nor less than two and one half (2 ½), years.

respects in compliance with Rule 26.

As the prior testimony portions of the Rule 26 reports, and the discussion below, show, that claim is simply untrue. None of the experts has disclosed a single docket number or even identified a single court or administrative agency in which testimony has been given. Furthermore, since these are undeniably professional forensic witnesses, who have collectively testified three-hundred and eighty-seven (387) times in the past four years, they, and RARE's counsel, should know better, and the requested relief, which includes an award of attorney's fees, should be granted.

Law and Argument

A. Expert Disclosure Requirements of Rule 26(a)(2)(B)

It has long been the rule that parties must respond fully and completely to discovery requests and that gamesmanship to avoid full disclosure will not be tolerated. *See, e.g., Hansel v. Shell Oil Corporation*, 169 F.R.D. 303 (E.D.Pa.1996). Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure mandates that with respect to expert witnesses, parties provide "a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years." That these disclosures contain information adequate to investigate specifics regarding prior testimony is obvious. "The identification of 'cases' at a minimum should include the courts or administrative agencies, the names of the parties, the case number, and whether the testimony was by deposition or at trial." *Nguyen v. IBP, Inc.*, 162 F.R.D. 675, 682 (D.Kan.1995) (holding that failure to adequately disclose cases in which expert previously testified was neither substantially justified, nor harmless, and would require preclusion of expert if deficiencies were not corrected within 40 days.); *See also, Elswick*

v. Nichols, 144 F.Supp.2d 758, 762 (E.D.Ky. 2001); *Dunkin' Donuts Inc. v. Patel*, 174 F.Supp.2d 202, 214 (D.N.J. 2001).

RARE's experts' disclosures are inadequate and make a mockery of the underlying principles that animate modern discovery doctrine to allow parties to obtain the fullest possible knowledge of the issues and facts before trial. *Lebarron v. Haverhill Co-op School Dist.*, 127 F.R.D. 38, 40 (D.N.H. 1989) (citing *Hickman v. Taylor*, 329 U.S. 495 (1947)). Here, RARE's completely unintelligible disclosures make it impossible for plaintiffs to know in what matters the experts have given prior testimony and thus to adequately prepare for upcoming depositions or trial. Despite repeated requests, and plaintiff's absolute right to this information, RARE has refused to correct these obvious inadequacies.

B. RARE's Inadequate Expert Disclosures³

Tested against the easily understood and logical requirements of Rule 26, a look at RARE's expert disclosures shows just how far short they fall.

William Burke (Ex. A)

William Burke, who, by plaintiffs' count, has testified in thirty-six (36) trials and at one hundred and thirteen (113) depositions over the past four years, has failed to disclose the case names, court names, or docket numbers in which he has previously given testimony, providing instead the name of a single party, an attorney and a "CITY/STATE" location.

Thomas Gualtieri (Ex. B)

³ Copies of the prior testimony portions of the defendant's expert disclosures are attached as exhibits A, B, and C to the Affidavit of Albert L. Farrah, Jr., submitted herewith.

Thomas Gaultieri is, by all accounts, an even more prolific expert than Mr. Burke, having testified two-hundred and nine (209) times in the past four years. Appended to his unsigned five page report dated January 30, 2007 are nine pages of trial and deposition testimony.⁴ Pages one through a portion of page four, along with page seven and eight, contain lists of undated testimony, usually described only by the name of one party, the attorney (presumably), for whom Dr. Gaultieri testified, and whether he was representing a plaintiff or defendant, and a city and state. There is no docket information of any sort, and it is impossible to distinguish between deposition or trial testimony.

Robert Pandina (Ex. C)

Robert Pandina, who has testified on twenty-nine (29) occasions in the past four years, has supplied a report with the most grossly inadequate disclosures of all, providing no dates regarding his prior testimony and failing to even mention the state in which the proceedings may have taken place, let alone the court name or a docket number. Instead, Dr. Pandina decided to vaguely identify his prior testimony by listing examples such as, “St. v. Smith.”

Like the expert reports in *Nguyen*, which simply contained the date of deposition, the attorney’s name, and (presumably) the name of the plaintiff, the reports in this action violate the requirements of *Fed.R.Civ.P.* 26(a)(2)(B).

C. Award of Attorney’s Fees

There is no excuse for failing to provide this information. The Federal Rules of provide plaintiffs with a remedy for such conduct. Having repeatedly requested that RARE comply with its disclosure obligations, and having been met initially with silence

⁴ Each of those nine pages contains the legend, in the lower left hand corner “Updated 10-06-06”, nearly four months before the date of the report. Dr. Gaultieri should be required to furnish a list of all testimony between October 6, 2006 and January 30, 2007.

and then a refusal to do so, plaintiffs are now entitled to their attorney's fees. Rule 37(a)(3) recognizes an incomplete disclosure as a failure to disclose for the purpose of this motion, and Rule 37(a)(4) allows plaintiffs, as the moving party, to recoup their reasonable expenses incurred in making this motion, including attorney's fees where, as here, the moving party has made a good faith effort to obtain the disclosure without court action. Fed.R.Civ.P. 37(a). Having established the defendant's violation of Fed.R.Civ.P. 26(a)(2)(B), and having made, in good faith, an effort to resolve this issue out of court, plaintiffs ask that this court grant its motion to compel disclosure of prior expert testimony and award reasonable expenses and attorney's fees in relation to this motion.

Conclusion

Adequate disclosure of prior expert testimony and attorney's fees should be allowed.

Plaintiffs
By their attorney,



ALBERT L. FARRAH, JR., ESQ.
One Washington Mall, 5th Floor
Boston, MA 02108
(617) 742-7766
B.B.O. #159340

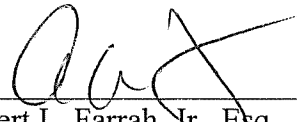
Date: April 30, 2007

CERTIFICATE OF SERVICE

SUFFOLK, SS

April 30, 2007

A copy of this pleading was today emailed and mailed, postage prepaid to Michael Gillis, Esq., Gillis & Bikofsky, P.C. 1150 Walnut Street, Newton Highlands, MA 02461.



Albert L. Farrah, Jr., Esq.